Remarks and Arguments

Claims 3-50 are pending in the application. Claims 3-5 and 11-20 have been rejected. No claims have been amended or cancelled in this Response.

Applicants note with appreciation the Examiner's indication of allowability of claims 6-10 and 21-50.

Claims 3-5 and 11-20 are rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,884,786 ("Valyi") in view of U.S. Patent No. 4,591,060 ("Tsukada"). The Examiner alleges that Valyi discloses an expanded neck which is at least partially molecularly oriented, wherein said neck is at least partially of a crystallizable polymer. (*Office Action* at pp. 2-3.) The Examiner also alleges that Tsukada discloses a neck which is at least partially molecularly oriented wherein said neck is at least partially of a crystallizable polymer. (*Id.*) Applicants respectfully traverse as follows.

Valyi is directed to molding preforms at lower packing pressures, which can allow more mold impressions to be accommodated in the same mold platen without using neck splits, since neck splits require more platen space. (*Valyi* at col. 1, ll. 19-24.) This can be achieved by providing a preform body including only a flange, and a partial neck finish as a separately molded article. (*Id.* at col. 1, ll. 38-43.) This arrangement avoids molding threads during injection molding of the preform and thus, the use of neck splits is not necessary. (*Id.* at col. 3, ll. 6-9.)

Valyi's partial neck finish 14 may fit over the body of preform 10 via a pressure fit or interference fit. (*Id.* at col. 3, ll. 11-14.) It can be made of the same material as preform body 12, or of another material such as an elastomer, which may be used to effect a seal. (*Id.* at col. 4, ll. 3-6.) Finish 14 can be kept from substantial axial movement on the container 42 by expanding the body 12 under flange 22. (*Id.* at col. 4, ll. 23-25.)

Tsukada states that biaxially oriented saturated polyester resin can be strengthened by biaxial orientation. (*Tsukada* at col. 1, ll. 23-25.) Such bottles are thick at the neck and thin at the shoulder, body, and bottom sections due to biaxial

orientation. (*Id.* at col. 1, ll. 30-34.)[1] The neck section, however, is not biaxially oriented, which can result in unstable physical properties, rendering it susceptible to thermal deformation. (*Id.* at col. 1, ll. 49-53.) According to Tsukada, this deformation can affect the sealing capability of the neck. (*Id.* at col. 1, ll. 59-61.)

Tsukada's container has a neck section 4 much thicker than the body 2 because the neck section of the parison is held by the mold, and thus, is not oriented. (*Id.* at col. 3, ll. 30-36.) More specifically, the upper part 5 of the neck section 4 is thicker and larger in outer diameter than the intermediate section 6 of the neck section 4. (*Id.* at col. 3, ll. 39-42.) These dimensions arise from crystallizing the upper half part and lower half part of the neck by heating the neck material higher than its glass transition temperature, followed by a gradual cooling. (*Id.* at col. 3, ll. 56-60.) The cap can then be secured onto the upper part of the neck section. (*Id.* at col. 4, ll. 15-19.)

Tsukada teaches that neck section 4 is physically and rigidly stabilized by the crystallization to resist thermal deformation. (*Id.* at col. 4, ll. 37-40.) Tsukada further mentions that the bottle thickness maintains the strength of neck even upon crystallization:

> When the preformed piece or parison is biaxially blow-molded, the neck section 4 is not oriented is therefore susceptible to crystallization and accordingly readily becomes brittle due to the crystallization, but since the neck section is thickened, it is firmly strengthened.

(*Id.* at col. 4, ll. 43-48.)

First, the Examiner's allegation that Valyi teaches sufficient expansion to orient the neck is unsubstantiated. Although there may be some expansion of the preform body 12 under flange 22, it is only for the purpose of preventing substantial axial movement of the finish 14 on the container 42. Since the flange 20 engages finish 14, as stated in col. 3, ll. 1-2, any expansion to prevent substantial axial movement of the

---

[1] Tsukada actually exchanges "thin" with "thick." Applicants believe this may be a typographical or translation error as the present text does not make logical sense.

finish would be understood by one of ordinary skill in the art to be small, i.e., the preform body 12 under flange 22 has a substantially similar diameter to that of neck finish to begin with.

Moreover, Valyi also teaches additional methods of fastening finish 14 on the preform, which would indicate to one of ordinary skill in the art that initially, the preform body 12 under flange 22 has a substantially similar diameter to that of neck finish. For example, Valyi teaches fastening methods such as pressure fitting or interference fitting, either of which do not require expanding the neck of the preform. Alternatively, the finish can be made of the same material as preform body 12, or of another material such as an elastomer to effect a seal. Again, these methods indicate that if one chose to expand the preform neck diameter, the expansion would be minimal since the preform neck diameter does not differ substantially from that of the finish. Thus, one of ordinary skill in the art would not expect that such minimal expansion would result in crystallization.

Second, there is no teaching or suggestion to crystallize the neck of the bottle of Valyi by using the crystallization method of Tsukada. Tsukada teaches crystallizing the neck for the purpose of physically and rigidly stabilizing it. Tsukada also teaches forming a neck section "much thicker than the body." Moreover, because Tsukada does not provide a separate neck finish, Tsukada would need to form a thicker neck section to achieve the stated objective. Valyi, in contrast, uses a separate neck finish, which would add additional thickness to the neck. As a result, the separate neck finish when fitted to the container, would strengthen the finish area. Thus, Valyi would not be motivated to use the crystallization method of Tsukada to physically and rigidly stabilize the neck section.

Applicants respectfully submit that the combination of Valyi and Tsukada is improper since the references could only be combined by a hindsight reconstruction using the Applicants' claims as a template. Accordingly, Applicants respectfully submit that the combination of Valyi and Tsukada do not establish a *prima facie* case of obviousness and respectfully request withdrawal of this rejection.

RECONSIDERATION

It is believed that all claims of the present application are now in condition for allowance.

Reconsideration of this application is respectfully requested. If the Examiner believes that a teleconference would expedite prosecution of the present application the Examiner is invited to call the Applicants' undersigned attorney at the Examiner's earliest convenience.

Any amendments or cancellation or submissions with respect to the claims herein is made without prejudice and is not an admission that said canceled or amended or otherwise affected subject matter is not patentable. Applicants reserve the right to pursue canceled or amended subject matter in one or more continuation, divisional or continuation-in-part applications.

To the extent that Applicants have not addressed one or more assertions of the Examiner because the foregoing response is sufficient, this is not an admission by Applicants as to the accuracy of such assertions.

Please grant any extensions of time required to enter this response and charge any fees in addition to fees submitted herewith that may be required to enter/allow this response and any accompanying papers to our deposit account 02-3038 and credit any overpayments thereto.

Respectfully submitted,

Therese Hendricks Date: 29 Aug 06

Therese A. Hendricks, Esq., Reg. No. 30,389
KUDIRKA & JOBSE, LLP
Customer Number 021127
Tel: (617) 367-4600 Fax: (617) 367-4656